

Internal Revenue Service

Department of the Treasury

District
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Gentlemen:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code of 1954.

The information submitted discloses that you were formed under the Condominium Ownership Act on [REDACTED], and governed by the by-laws of [REDACTED].

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(4) Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes".

Your organization's By-Laws do not contain the required clauses, that your organization is organized for nonprofit purposes and that your net earnings are devoted exclusively to those purposes.

Also your organization's specific and primary purpose is to provide for the management, administration, maintenance and preservation and architectural control of the condominiums, common areas, and improvements from time to time constructed with that certain parcel of real property more particularly described as: [REDACTED] located in [REDACTED].

The Income Tax Regulations section 1.501(c)(4)-1(a) states that a civic league or organization described in section 501(c)(4) may be exempt if it is not organized or operated for profit and it is operated exclusively for the promotion of social welfare. The Regulations describe social welfare activities as promoting in some way the common good and general welfare of the people of the community. An organization coming within the purview of this section is one which is operated exclusively for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-99 which provides that a homeowners' association to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common area or facilities it owns and maintains must be for the use and enjoyment of the general public.

In response to our office's homeowner's and community associations - questionnaire, Form 5908, you state that your organization administers and enforces the covenants for preserving the architecture and appearance of the development, and provides exterior maintenance for private residences.

Revenue Ruling 69-280, 1969-1, C.B., 152 holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

After careful consideration of the information submitted, we have concluded that you are not primarily engaged in the promotion of the common good and general welfare of the people of the community, and therefore, you are not operated exclusively for the promotion of social welfare. Accordingly we hold that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code of 1954.

You appear to be a homeowners' association as outlined in Section 528 of the Internal Revenue Code and as described in the Regulations stated in Internal Revenue Bulletin 1980-23 page 10, as a residential real estate management association. The association is taxed as a corporation but with modifications on other income. The modifications permit exclusion of exempt function income for the filing of Form 1120H, income tax return for homeowners' associations.

For an organization to qualify as a homeowners' association it must be organized and operated to provide for acquisition, construction, management, maintenance, and the care of association property. In addition, a homeowners' association must meet both a source of income test (which generally requires that at least 60% of its gross income consists of membership dues, fees, or assessments from members of the association) and an expenditure test (which generally requires that at least 90% of its expenditures be in furtherance of its exempt purposes). If an association meets the required tests and makes the election under section 528, it will not be taxable on that portion of its income which consists of dues, fees, and assessments from its members. To the extent that a homeowners' association does have taxable income, it will be taxed (with certain modifications described in section 528 of these regulations) as a corporation taxable under section 11.

You have the right to protest this determination if you believe it is incorrect. Protest instructions are contained in Publication 892 enclosed.

If we do not hear from you within the time specified, this letter will become our final determination in this matter.

If you agree to the adverse action shown above, please sign and return one copy of the enclosed Form 6018 Consent to Proposed Adverse Action, within ten days of this letter. You should retain a copy for your record.

You are required to file Federal income tax returns annually, with your district director.

Thank you for your cooperation.

Sincerely yours,

District Director

Enclosures:
Publication 892
Form 6018